

D-4

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

April 25, 2008

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No: 00KD-483
KAUAI

Grant of Term, Non-Exclusive Easement to Sarah O. Nakamura Trust for Access Purposes; Rescind Prior Board Action of September 8, 2000, under Agenda Item D-19, Sale of Portion of Abandoned Ditch Right-of-Way as Remnant to Sarah Nakamura, Kapaa Homesteads 4th Series, Kapaa, Kauai, TMK: (4) 4-6-28: portion 15

APPLICANT:

Sarah O. Nakamura Trust, whose mailing address is c/o Creighton Nakamura, 971 Kuhio Highway, Kapaa, Hawaii 96746.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kapaa Homesteads situated at Kapaa, Kauai, identified by Tax Map Key: (4) 4-6-28:portion 15, as shown on the attached map labeled Exhibit A.

AREA:

304 square feet, more or less.

ZONING:

State Land Use District: Urban
County of Kauai CZO: R-4

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution: NO

CURRENT USE STATUS:

Vacant and unencumbered.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain and repair a right-of-way over and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years.

ANNUAL RENT:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No.1, Item No.2 that states "use of State lands that previously existed with no interruption of use change."

DCCA VERIFICATION:

The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

1. Pay for an appraisal to determine the one time payment of fair market value for the easement; and
2. Provide survey maps and descriptions according to State DAGS Standards and at the Applicant's own cost.

BACKGROUND:

The abandoned ditch right-of-way remnant is part of Parcel 15 running between Parcel 14 and Parcel 18 (Wili Road), owned by Mrs. Sarah Nakamura. In July 2000, Mrs. Nakamura requested permission to purchase a portion of the ten (10) foot wide ditch right-of-way.

The title company handling the closing of sales of Punalei Terrace CPR Kapaa discovered the 10 foot wide ditch right-of-way was not owned by Mrs. Nakamura.

The Board at its September 8, 2000 meeting under Item D-19 approved the sale of the ditch right-of-way remnant to Mrs. Nakamura.

By letter dated August 9, 2004 staff wrote to Mrs. Nakamura and informed her the consideration for the 304 square foot remnant was \$200. A check for \$255 was submitted on August 12, 2004.

By letter dated August 4, 2006, Mrs. Nakamura notified the Division she has changed her mind on the purchase of the ditch right-of-way remnant due to the length of time to complete the sale of the remnant, and requested that the State refund her monies for the purchase price of the remnant.

On September 6, 2006, Esaki Surveying and Mapping submitted consolidation maps approved by the County of Kauai, Department of Planning.

Later by letter dated November 28, 2006, staff informed Mrs. Nakamura that it is her responsibility to have the County rescind the consolidation of the remnant and Wili Road.

Mr. Creighton Nakamura son of Mrs. Sarah Nakamura has applied for an access easement over Parcel 15. Wili Road is privately owned by the Sarah O Nakamura Trust.

ANALYSIS:

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Staff is recommending prior Board action of September 8, 2000 be rescinded and a term easement be issued to Sarah O. Nakamura Trust.

Staff plans to revisit and update the appraisal report done by ACM Consultants in 2004. Mrs. Nakamura is responsible for all and any expenses related to having the County of Kauai rescind the consolidation of the remnant and Wili Road.

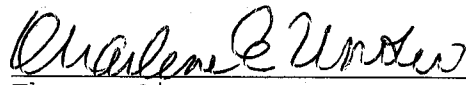
RECOMMENDATION: That the Board:

1. Rescind the prior Board action of September 8, 2000, under agenda item D-19.
2. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and

Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

3. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (4) 4-6-28:18, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
4. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term non-exclusive easement to Sarah O. Nakamura Trust covering the subject area for access purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current term easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (4) 4-6-28:18, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



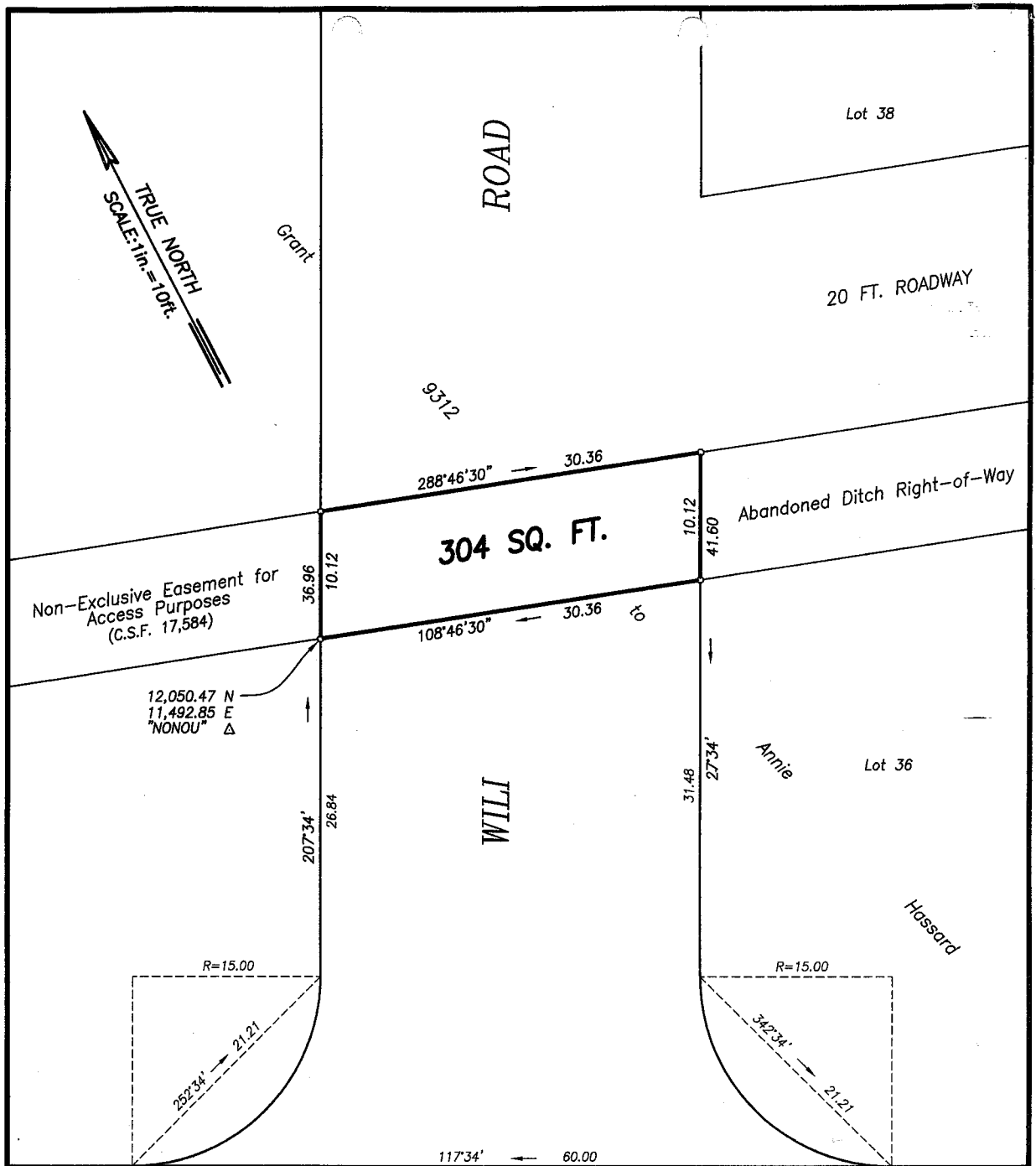
Thomas Oi
Kauai District Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson





KAWAIHAU

ROAD

ABANDONED DITCH RIGHT-OF-WAY

Kapaa, Kawaihau (Puna), Kauai, Hawaii

JOB K-192(03)

C. BK.

Scale: 1 inch = 10 feet

TAX MAP 4-6-28

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

C.S.F. NO. 23,917

JGL November 24, 2004

EXHIBIT A

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Land Management Branch
Honolulu, Hawaii 96813

September 8, 2000

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii 96813

KAUAI

Sale of Portion of Abandoned Ditch Right-of-Way as Remnant
to Sarah Nakamura, Portion Kapaa Homesteads, 4th Series,
Kapaa, Kauai, Tax Map Key 4-6-28: por. 15

APPLICANT: Sarah Nakamura, widow, whose address is c/o Creighton
Nakamura, 971 Kuhio Highway, Kapaa, Hawaii 96746

**LEGAL
REFERENCE:** Section 171-52, Hawaii Revised Statutes, as amended

LOCATION: Portion of government lands of Kapaa Homesteads,
Kapaa, Kauai, identified by Tax Map Key
4-6-28: por. 15, as shown the attached map labeled
Exhibit A.

AREA: 300 sq.ft., more or less. Exact land area and
configuration to be determined by the applicant's
surveyor, subject to review and confirmation by the
Survey Division of the Department of Accounting and
General Services.

PURPOSE: To be utilized in consolidation with applicant's
abutting fee properties, which is the privately owned
Wili Road right-of-way.

ZONING: State Land Use Commission: Urban
County of Kauai CZO: Residential District R-4

**LAND TITLE
STATUS:** Subsection 5(b) land of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii
State Constitution: NO

**CURRENT USE
STATUS:** GL No. 3827 to East Kauai Water Company
expired 4 years ago; replacement documents have not
been executed nor returned.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

9/8/00

Exhibit B

CONSIDERATION: One time lump sum payment, to be determined by an independent appraisal paid for by the applicant, establishing fair market value, subject to review and acceptance by the Chairperson.

**ENVIRONMENTAL
REVIEW:**

In accordance with the Land Division, Land Management Branch's Environmental Impact Statement Exemption List, approved by the Board on September 12, 1997 under Agenda Item D-10, the subject request qualifies under exempt Class of Action (1) (2)-use of State lands that previously existed with no interruption of use change.

The applicant is requesting to consolidate the subject remnants into her abutting fee owned parcel. Accordingly, no preparation of an environmental assessment nor acquisition of a negative declaration is required.

DCCA

VERIFICATION:

Place of business registration confirmed:	n/a
Registered business name confirmed:	n/a
Applicant in good standing confirmed:	n/a

n/a applying as an individual

APPLICANT

REQUIREMENTS:

Applicant shall be required to:

1. Pay for an appraisal to determine the one-time payment of fair market value for the remnant;
2. Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
3. Consolidate remnant with the Applicant's property at applicant's own cost.

REMARKS:

Pursuant to section 171-52, HRS, a remnant is defined as "a parcel of land economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics." The subject parcel has been determined to be a remnant by this definition for the following reason:

- The parcel is part of an abandoned ditch right-of-way lying within the private Wili Road right of way.

TO THE CHAIRMAN OF THE BOARD
FROM THE LAND DIVISION
DATE: 10/10/97

In order to dispose of remnants, they must be first offered for sale to the abutting owner(s). The applicant is the only fee owner of roadway property that abuts this portion of the abandoned ditch right of way to the north and south. The disposition to the applicant meets the requirements of law.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

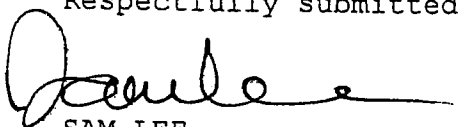
There have been no other requests for disposition of portions of this abandoned ditch right of way. This portion of the ditch system, used to transport irrigation waters, has ceased to be used for more than 10 years.

RECOMMENDATION: That the Board:

1. Find that the subject State land to be economically or physical unsuitable or undesirable for development or utilization as separate units by reason of their location, size, shape or other characteristics, and therefore, by definition is a remnant pursuant to Chapter 171, HRS.
2. Authorize the subdivision and consolidation of the subject remnant by the applicant.
3. Authorize the sale of the subject remnant to Sarah Nakamura covering the subject area under the terms and conditions cited above, which are by this reference incorporated therein and further subject to the following:
 - a. Prior to the issuance of the conveyance document, the Applicant shall consolidate the remnant with his abutting property (Wili Road right of way) through the County subdivision process;
 - b. The standard terms and conditions of the most current deed (remnant) form, as may be amended from time to time;
 - c. Review and approval by the Department of the Attorney General;
 - d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

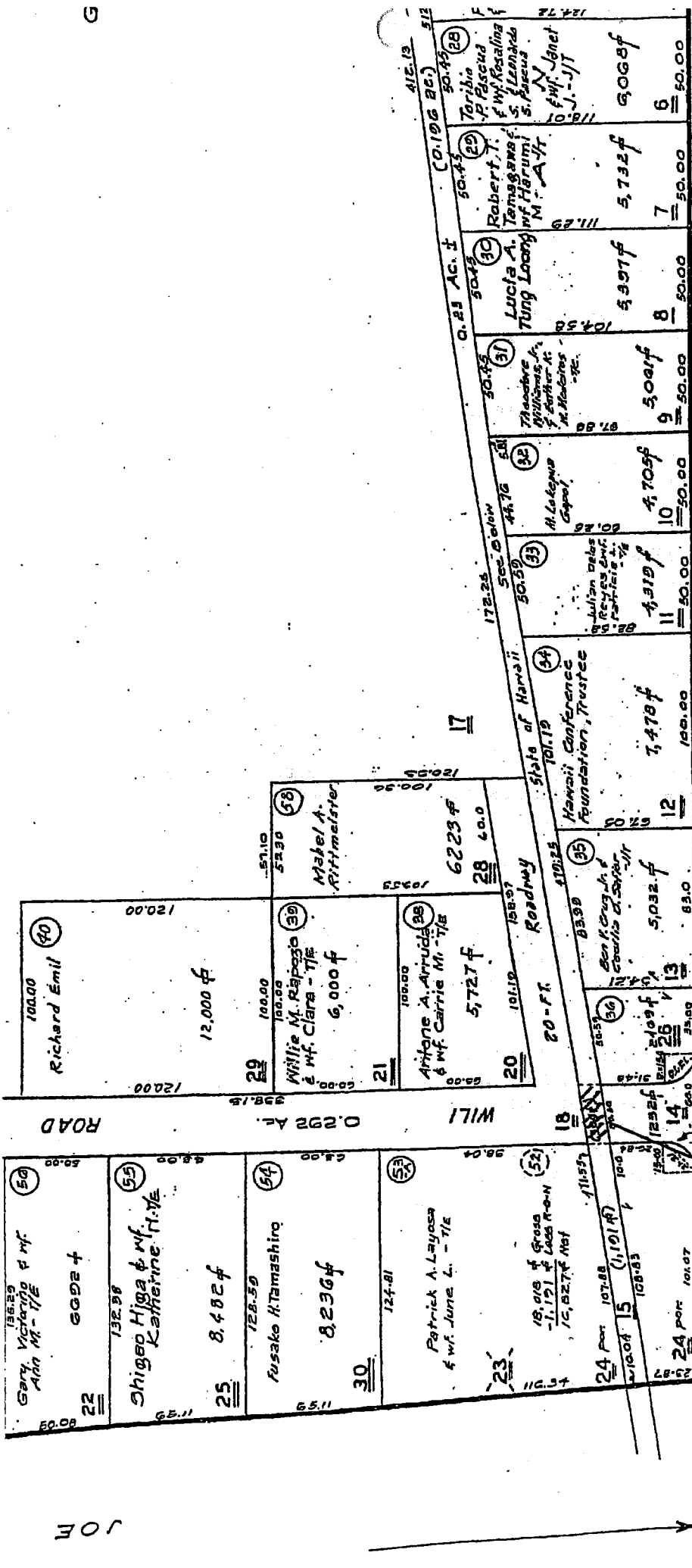
Respectfully submitted,

APPROVED FOR SUBMITTAL:


SAM LEE

Kauai District Land Agent


TIMOTHY E. JOHNS,
Chairperson



KAWAIIHAU ROAD

PARCELS 1500:
(Clear Kauai Water Co. L.H.)
per G.L.S. 3827

36 1659 SUBD.

OHU ROAD

PLAT P. ESTATES

KAWAIIHAU F. P. ESTATES

24A HOMESTEADS, 4TH SERIES, KAPAA, KAUAI

LAND PART
EXHIBIT 'A'

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